

**United States Department of Labor
Employees' Compensation Appeals Board**

D.S., Appellant)	
)	
and)	Docket No. 10-851
)	Issued: November 18, 2010
DEPARTMENT OF THE ARMY, FINANCING & ACCOUNTING SERVICE, Indianapolis, IN,)	
Employer)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 8, 2010 appellant, through his attorney, filed a timely appeal from an August 13, 2009 merit decision of the Office of Workers' Compensation Programs terminating his compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation effective December 21, 2008 on the grounds that he had no further disability due to his accepted employment injury; and (2) whether the Office properly terminated his authorization for medical treatment.

FACTUAL HISTORY

On January 4, 1989 appellant, then a 49-year-old guard, filed a claim alleging that he sustained an injury to his low back on that date in the performance of duty. The Office accepted

his claim for lumbosacral sprain and the displacement of a lumbar intervertebral disc at L5-S1. After sustaining intermittent periods of disability, appellant stopped work in 1989 and did not return.¹

On August 26, 2008 Dr. Richard T. Holt, an attending Board-certified orthopedic surgeon, diagnosed low back pain due to degeneration of the lumbar spine. In response to form questions, he indicated that appellant remained symptomatic due to his work injury and could perform sedentary work. Dr. Holt found that appellant's condition was an aggravation of a preexisting condition.

On September 29, 2008 the Office referred appellant to Dr. Stanley Collis, a Board-certified orthopedic surgeon, for a second opinion examination. In the accompanying statement of accepted facts, it noted that, prior to his January 4, 1989 work injury, appellant had received a diagnosis of degenerative disc disease and had undergone a microdiscectomy at L5-S1 on August 1, 1988.

On October 17, 2008 Dr. Collis reviewed the history of injury and listed findings on examination of positive straight leg raising with no signs of atrophy or loss of strength in the lower extremities. He interpreted an x-ray as showing "an obvious degenerative disc lesion at L5-S1." Dr. Collis diagnosed postdisc removal at L5-S1 and a degenerative disc lesion at L5-S1, both of which he advised were not employment related. He found no objective evidence of either lumbosacral strain or a displaced lumbar intervertebral disc at L5-S1 and that these conditions had apparently resolved. Dr. Collis opined that appellant could not perform his usual employment due to his nonemployment-related conditions of a disc lesion at L5-S1, prior surgery at L5-S1 and sarcoidosis. He stated:

"In summary, I think [appellant] does have some back pain and some pain in the right leg, but I think that [it] is due to the disc surgery he had at L5-S1 and also the developmental arthritis of the L5-S1 discs. Both of those conditions are not work related. I think the incident at work in 1989 aggravated [the] preexisting condition of postdisc surgery at L5-S1 and disc lesion at L5-S1. I think that the aggravation was temporary."

In an accompanying work restriction evaluation, Dr. Collis listed work restrictions but indicated that the restrictions were not employment related.

On October 29, 2008 the Office notified appellant of its proposed termination of his compensation and authorization for medical benefits. On November 17, 2008 appellant asserted that the report of Dr. Collis was erroneous and that he was being "unjustly assailed without deference to the facts of this injury." He related that he sustained a prior work injury in 1987 for which he underwent surgery.²

¹ Appellant legally changed his name on June 23, 2004.

² On November 18, 2008 Dr. Holt noted that appellant had a history of surgery at L4-5 and L5-S1.

By decision dated December 9, 2008, the Office terminated appellant's compensation and authorization for medical treatment effective December 21, 2008.

On January 4, 2009 appellant requested a telephone hearing. The Office scheduled the telephone hearing for May 12, 2009. On May 12, 2009 appellant alleged that he experienced numerous falls due to his work injury. He also maintained that he filed a claim for a spinal injury on July 29, 1987, assigned file number xxxxxx170. Appellant alleged that the employing establishment failed to timely forward the claim for the July 29, 1987 injury to the Office for review and that the injury had resulted in his 1988 spinal surgery. He also maintained that he called for his scheduled hearing but was told that it had been scheduled for an earlier time.

On May 21, 2009 appellant indicated that he had missed the hearing because he was confused about time zones. He agreed to proceed with a review of the written record. On May 29, 2009 the Office granted his request to postpone the scheduled hearing and conduct a review of the written record.

By decision dated August 13, 2009, the hearing representative affirmed the December 9, 2008 decision. He found that the record contained no contemporary medical evidence supporting that he had any residuals of his work injury. The hearing representative noted that the claim for the July 1987 work injury, assigned file number xxxxxx170, was not relevant as it was not a part of the current claim.

LEGAL PRECEDENT -- ISSUES 1 & 2

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁵ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁶

ANALYSIS -- ISSUES 1 & 2

The Office accepted that appellant sustained lumbosacral strain and a displaced lumbar intervertebral disc at L5-S1 due to a January 4, 1989 work injury. It paid compensation for total disability beginning 1989.

³ *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁴ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁵ *T.P.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, 53 ECAB 727 (2002).

⁶ *Id.*

On September 29, 2008 the Office referred appellant to Dr. Collis for a second opinion examination. On October 17, 2008 Dr. Collis found positive straight leg raising on examination without atrophy or loss of strength. He diagnosed a history of disc removal at L5-S1 and a degenerative disc lesion at L5-S1 by x-ray. Dr. Collis found no objective evidence of lumbosacral strain or a displaced lumbar intervertebral disc at L5-S1 and opined that these conditions had apparently resolved. He determined that appellant was unable to work due to a nonemployment-related degenerative disc lesion at L5-S1, his history of surgery in 1988 at L5-S1 and sarcoidosis. Dr. Collis found that the work injury aggravated the effects of the surgery at L5-S1 but that the aggravation was temporary. The Board finds that Dr. Collis did not adequately support his opinion that appellant had no further evidence of the accepted conditions of lumbar strain and a displaced lumbar disc at L5-S1. Dr. Collis interpreted the x-rays as showing continued pathology at L5-S1 and noted positive findings on examination. He generally noted there were no objective findings of either condition but did not bolster his conclusion by explaining what objective findings were lacking that he would expect to see if residuals of the accepted work injury remained. While Dr. Collis generally negated causal relationship, he failed to offer sufficient medical reasoning in support of his conclusions.⁷ His opinion as to a temporary aggravation of the preexisting back condition appears equivocal and not to a reasonable degree of medical certainty.⁸ As Dr. Collis did not sufficiently explain why the accepted conditions of lumbosacral strain and a displaced lumbar intervertebral disc had resolved, his opinion is insufficient to establish that appellant's disability had ceased. The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation and medical benefits for the January 4, 1989 employment injury.

CONCLUSION

The Board finds that the Office failed to meet its burden of proof to terminate appellant's compensation as of December 21, 2008 on the grounds that he had no further residuals or disability due to his accepted employment injury.

⁷ See *Elaine Sneed*, *supra* note 3.

⁸ The statement of accepted facts provided the physician was not based on a proper factual background of appellant's accepted conditions. See *Gwendolyn Merriweather*, 50 ECAB 411 (1999).

ORDER

IT IS HEREBY ORDERED THAT the August 13, 2009 decision of the Office of Workers' Compensation Programs is reversed.

Issued: November 18, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board